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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

DEC 17 2004

In re Application of: :
JANNARD, JAMES H. :
Application No. 09/711,433 :
Filed: November 13, 2000 :
Attorney Docket No.: OAKLY.929C2 :

DECISION ON PETITION TO WITHDRAW
HOLDING OF ABANDONMENT

This is a decision on the petition filed November 17, 2003, requesting withdrawal of the holding of abandonment for the above-identified application.

The petition is granted.

The application was held abandoned for failure to respond to the Office action mailed March 27, 2002. A Notice of Abandonment was mailed November 12, 2002.

Petitioner asserts that on June 12, 2002, a response, including an amendment and a Certificate of Mailing with a date of deposit of June 12, 2002, was timely filed with the United States Patent and Trademark Office (PTO). To support this assertion, petitioner has submitted a copy of the response and a copy of an itemized postcard date stamped by the PTO on June 17, 2002.

A review of the application file record reveals that the original copy of the above-identified response is not of record in the application file and cannot be located. A copy of the response was received by facsimile on December 05, 2002. However, M.P.E.P. § 503 states that "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." The copy of the response bears a Certificate of Mailing showing a date of deposit of June 12, 2002. Accordingly, it is concluded that the response was timely received in the PTO, but lost after receipt thereof.

For the above stated reason, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the examiner for appropriate action.

Inquiries regarding this decision should be directed to Lissi Mojica Marquis at (571) 272-1596.

Janice A. Falcone, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components